

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

TITAN MACHINERY, INC.;

Pottawattamie County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2011-AQ- 14

NO. 2011-SW- 16

TO: Ron Winter,
Store Manager
502 West High Street
PO Box 218
Avoca IA 51521

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Titan Machinery, Inc. for the purpose of resolving an issue pertaining to illegal solid waste disposal, including the illegal open burning of solid waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Allan Bertelsen, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
Phone: (712) 243-1934

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515/281-8889

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to

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secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Titan Machinery, Inc. is a farm equipment company headquartered in West Fargo, North Dakota. Titan Machinery, Inc. operates dealerships in Iowa including dealerships in Avoca and Greenfield.
2. On December 10, 2009, the DNR and Titan Machinery, Inc. entered into Administrative Consent Order Nos. 2009-AQ-31 and 2009-SW-20 to resolve violations relating to the illegal burning of trade waste at the Greenfield, Iowa dealership. A penalty of \$2,500 was paid by Titan Machinery, Inc. to resolve these violations.
3. On September 10, 2010???, the DNR received a complaint alleging that the Titan Machinery, Inc. dealership in Avoca, Iowa was hauling pallets and other solid waste to a rural site and illegally burning the solid waste.
4. On September 19, 2010, the DNR investigated the complaint. The property at which the burning was alleged to be occurring was a farm owned by Bruce Havick and located in Section 28 of Fairview Township in Shelby County, Iowa. DNR personnel observed a burn pit containing predominately pallet material and other wood waste. Mr. Havick was interviewed and indicated the wood waste came from Titan Machinery, Inc. Mr. Havick further indicated that burning had not occurred for several months due to dry weather. The DNR then contacted ~~John~~ ^{Don} Winter, store manager of the Avoca Titan Machinery, Inc. business. Mr. Havick acknowledged prior burning at the site but indicated that no burning had occurred for several months. Photographs were taken of the burn pit.
5. On October 21, 2010, the DNR issued a Notice of Violation to Titan Machinery, Inc. The Notice informed Titan Machinery, Inc. of the violations and required the submission of a solid waste disposal plan for the Avoca facility.
6. On October 29, 2010, the DNR received documentation of proper disposal of the remaining solid waste at the Havick farm.
7. On November 11, 2010, Titan Machinery, Inc. submitted a solid waste disposal plan for the Avoca facility.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

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2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under the 567 IAC 23.2(3) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision by Titan Machinery, Inc.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The Department has documented violations of these provisions by Titan Machinery, Inc.

V. ORDER

THEREFORE, the Department orders and Titan Machinery, Inc. agrees to pay a penalty of \$3,500 within thirty days of the execution of this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$3,500. The administrative penalty is determined as follows:

Economic Benefit – Titan Machinery, Inc. has achieved an economic benefit from the violations documented herein. The illegal open dumping and open burning of solid waste results in the avoidance of time, labor and disposal costs associated with the proper management of solid waste. Titan Machinery, Inc. disposed of the solid waste discovered by the DNR at the burn site. The amount of solid waste previously burned at the site is unknown but was acknowledged to have occurred. Based upon these factors, a penalty of \$250 is assessed.

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Gravity – The improper disposal and burning of solid waste releases toxins and thereby threatens ambient air quality and human health. The improper disposal of solid waste may cause groundwater contamination. The failure to properly dispose of solid waste threatens the integrity of the regulatory program. In light of the response of Titan Machinery, Inc. and in order to resolve this matter consensually a penalty of \$500 is assessed for this factor.


Culpability – Titan Machinery, Inc. generates trade waste as a normal part of its business operations. Titan Machinery, Inc. has a duty to properly dispose of its trade wastes and to be aware of the applicable regulations. These solid waste violations occurred within one year of the issuance of an administrative order and penalty to another Titan Machinery, Inc. facility for similar violations. Therefore the assessment of the maximum penalty of \$3,000 per day can be justified for this factor. Titan Machinery, Inc. has developed a solid waste management plan and provided the DNR with documentation of its remedial efforts. In consideration of these factors, a penalty of \$2,750 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Titan Machinery, Inc. For that reason Titan Machinery, Inc. waives its right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 17th day of
May, 2011.



TITAN MACHINERY, INC.

Dated this 28 day of
April, 2011

Field Office 4; VI C; VII C 1